

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

RONALD NAPIER,

Petitioner,

Case No. C-1-01-511

v.

Judge Spiegel

HAROLD CARTER,

Magistrate Judge Sherman

Respondent.

**RESPONDENT'S MEMORANDUM OPPOSING PETITIONER'S MOTION
FOR SUMMARY JUDGMENT**

Petitioner filed a petition for a writ of habeas corpus. On June 9, 2003, Respondent filed a return of writ. Petitioner has recently filed a motion for summary judgment. His motion for summary judgment should be denied.

A motion for summary Judgment is not appropriate in a habeas case. 28 U.S.C. 2243 provides, in relevant part, that after Respondent files an answer in a habeas case:

The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

The Court's review of a habeas petition is in the nature of a summary review; therefore, a motion for summary judgment is superfluous in a habeas case.

For the foregoing reason, Petitioner's motion should be denied. Further, for the reasons stated in Respondent's return of writ, Petitioner is not entitled to judgment as a matter of law. For the reasons stated in Respondent's return of writ, the petition for a writ of habeas corpus should be denied.

Respectfully submitted,

Jim Petro
Ohio Attorney General

S/Diane Mallory
Diane Mallory (0014867)
Assistant Attorney General
Corrections Litigation Section
150 East Gay Street, 16th Floor
Columbus, Ohio 43215
(614) 644-7233

CERTIFICATE OF SERVICE

I hereby certify that on December 2, 2003, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/Diane Mallory
DIANE MALLORY (0014867)